> "* * * I am an accountant in business for myself and conduct my business from 36 Richmond Terrace, Staten Island, New York. That I am not a certified public accountant and I am not enrolled to practice before the Treasury Department * * *."

14. Until advised by my attorneys, I did not understand the significance of Mr. Mack's lack of qualification to represent [64] taxpayers before the Treasury Department and the inherent illegality of the representation.

15. I am informed by my counsel that the illegal acts of Mr. Mack in representing me before the Treasury Department and the illegal acts of the agents in participating in such representation render all the proceedings engaged in by them nugatory and void.

16. I am informed by my counsel that the acts of Mr. Mack in undertaking any such representation before the Treasury Department were illegal and a violation of the criminal laws of the State of New York. The participation of the agents therein was both illegal under the laws of the State of New York and their dealings with and revelations of my tax affairs to Mr. Mack constitute a violation of pertinent laws and regulations of the United States.

17. At no time did I give authority, express or implied, to Mr. Mack to make my private books, records and papers available to agents of the Treasury Department engaged in a criminal investigation, nor did I authorize him, directly or indirectly, to waive any rights which are guaranteed to me as a private person under the Constitution of the United States.

18. I now know that Mr. Skolnick is a Special Agent of the Internal Revenue Service and it appears that he

was conducting a joint investigation in which he was responsible for the criminal features of my case from the outset and for the procurement of proper proof to establish a criminal charge of income tax evasion against me. I had no knowledge of this at the time of the initiation or of the pendency of the examination. It now appears that Special Agent Skolnick master minded the machinations of Internal Revenue Agents who were the innocuous appearing tools used by him in developing a criminal charge against me and whose identities were availed of for the purpose of cloaking the proceedings with the [65] appearance of an innocent civil examination, furthgr explaining the use of receipts and letters which bear on their face indications of a civil proceeding rather than a criminal one.

19. The ostensibility civil nature of my examination was made manifest to me by the identity of agents as Internal Revenue Agents, who commenced it, and it was reinforced by the nature of their discussions with Mr. Mack reported to me, the receipts given for papers (attached hereto as "Exhibit B"), and the letter from the District Director of Internal Revenue, attached as "Exhibit A."

20. At the behest of the agents, and as their agent, Mr. Mack obligingly disclosed evidence and papers in response to every demand. In the affidavit procured by Mr. Skolnick, Mr. Mack stated:

> "At the time Russo retained me, he furnished me with all available records of his business expenditures. These records consisted only of bank statements, cancelled checks and check stub books. At the request of the Internal Revenue Service, I made an analysis of these records on 14 columnar work sheets and I made a summary of my find-

> ings on 7 columnar worksheets. My findings were made available to Revenue Agent Thomas J. Ginnane of the Internal Revenue Service. * * *
>
> "When I completed my analysis of the records, I immediately turned over to Revenue Agent John Foley of the Internal Revenue Service my analysis and available records which he returned to me at a later date. Subsequently the same analysis and records were inspected at my office, * * * by Revenue Agent Thomas Ginnane. James D. Russo did not inspect these analysis sheets and he had no knowledge of the exact amount of the expenses as shown by these analysis sheets."

Mr. Mack thus became the willing tool of the agents who, aware of Mack's lack of qualification, seized upon him as a conduit for the transmission of evidence, papers and material needed by them in the preparation of the criminal charge against me, all without my knowledge.

[66] 21. I am informed and verily believe that my private books, records and papers thus obtained contain information which said agents could not otherwise have obtained by lawful and proper means.

22. I am informed and verily believe that using the information thus obtained from my private books and records and the leads and clues obtained therefrom, Special Agent Skolnick then recommended criminal action against me.

23. I am informed and verily believe that relying upon the same information obtained in the manner aforesaid, this matter was ultimately referred to the Department of Justice and then to the United States Attorney for the Eastern District of New York for prosecution, who now has under consideration the question of whether my case shall be submitted to the Grand Jury.

24. At no time was I, directly or indirectly, advised by Special Agent Skolnick or the Internal Revenue Agents working under Mr. Skolnick's direction that their investigation of my income tax returns for the years involved was for the purpose of obtaining evidence in connection with a criminal prosecution against me; nor was I ever warned by either of them that any of my private books, records or papers, or information obtained therefrom, might be used against me in a criminal proceeding; nor was I ever advised by either of them of my rights under the law or my constitutional rights under the Fourth and Fifth Amendments to the Constitution.

25. The aforesaid agents at no time served upon me any search warrant or other lawful process to permit their access to my private books, records and papers, nor did they have any permission from me so to do in connection with their criminal investigation as aforesaid.

26. I am informed and verily believe that the taking and use of my private books, records and papers by means of masquerade, [67] misrepresentation, fraud and deceit and all leads, clues and other information derived therefrom or revealed thereby, directly or by any use or advantage thereby obtained is in violation and in derogation of my rights under the laws of the United States, the Constitution of the United States and particularly the Fourth and Fifth amendments thereto.

27. I am informed and I believe that by virtue of clues and leads obtained as aforesaid, the Internal Revenue Service was enabled to obtain additional information and records.

28. In view of the foregoing, an order to show cause to initiate this special proceeding is prayed for so as to bring this application on to be heard before an indictment is sought against me. It is my purpose to avoid the shame

and obloquy which attach to a person once the shadow of indictment has fallen across his path. The order to show cause prayed for herein also provides that the United States Attorney be stayed from submitting any evidence illegally obtained as aforesaid and any of the fruits therefrom to the Grand Jury pending the determination of this proceeding and the service of notice of entry of an order hereon. It is made returnable at the next Civil Motion day.

29. No previous application has been made for the same or similar relief.

WHEREFORE, I pray that an order pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure be made herein directing the return of all private books, records, and papers, extracts, notes and copies therefrom and all other property belonging to me seized by agents and representatives of the United States of America and now in the possession of the United States Attorney for the Eastern District of New York and other agents and representatives of the United States [68] of America; that the said papers, notes, copies and all clues and leads therefrom be suppressed and that the United States Attorney for the Eastern District of New York and all other agents and representatives of the United States of America be restrained from using any of said private books, records, papers, and extracts, notes and copies therefrom and all other private property belonging to me, or any information, directly or indirectly obtained therefrom and by means thereof or as a result of the examination and use thereof, and leads and clues revealed thereby; and that the said United States Attorney and said other agents of the United States of America be restrained from submitting any such evidence or other illegally obtained evidence to the Grand Jury or from using any thereof on a trial or for any purpose; and that a hear-

Exhibit A, Annexed to Foregoing Affidavit of James D. Russo

ing be held and that evidence may be adduced for the determination of issues of fact arising out of this application; and for such other and further relief as to the Court may seem just and proper.

(Sworn to by James D. Russo, Feb. 13, 1956.)

Exhibit A, Annexed to Foregoing Affidavit of James D. Russo:

[69]

UNITED STATES TREASURY DEPARTMENT

OFFICE OF THE DISTRICT DIRECTOR OF INTERNAL REVENUE

Lower Manhattan

New York 7, New York

July 12, 1954

In replying refer to:

Chief, Audit Division
90 Church Street
New York 7, N. Y.

Symbols: LM:A:FA:JJM-N:TJG

Years: 1949, 1950, 1951, 1952

Mr. and Mrs. James D. Russo
94 Van Name Avenue,
Staten Island 3, N. Y.

Your income tax returns for the years above indicated have been referred to this office for verification.

Exhibit A, Annexed to Foregoing Affidavit of James D. Fosso

Examination of records used in the preparation of your returns will be made at 478 Bay Street, Staten Island, N. Y.

It is requested that you appear at that address on July 16, 1954, at 10 A. M., bringing with you the following items, where applicable, for the years listed:

1. Retained copies of income tax returns and withholding tax receipts, Forms W-2.

2. Cancelled checks, receipts or other records in support of all itemized deductions claimed.

3. Property records including record of mortgage and tax payments on real estate or other assets.

4. Bank records and cancelled checks including those of your spouse and children.

5. All work sheets pertaining to items of income and deductions appearing on the returns and to the computation of tax liability as reported.

If you are unable to appear at the specified time please contact Internal Revenue Agent Thomas J. Ginnane at REctor 2-9100, Extension 8234 or at GIbraltor 7-0711. Correspondence should be mailed to the address indicated above.

Please present this notice.

Very truly yours,

(Signed) DENIS J. McMAHON
District Director of Internal Revenue
Lower Manhattan

Exhibit B, Annexed to Foregoing Affidavit of James D. Russo.

[70]

September 23, 1955

Received this date from William Mack, 36 Richmond Terrace, Staten Island, N. Y., the following worksheets pertaining to the tax examination of James D. Russo for the years 1949, 1950, 1951.

1949—Analysis of bank account and summary

4-14 column worksheets
1- 7 column "

1950—same

5-14 column worksheets
1- 7 " "

1951—same

3-14 column worksheets
4- 7 " "

THOMAS J. GINNANE
Internal Revenue Agent

Order Vacating Stay Contained in Order to Show Cause.

[90]

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[SAME TITLE.]

At Brooklyn, New York, in said District on February 23, 1956.

An affidavit having been submitted to this Court by Leonard P. Moore, United States Attorney for the Eastern District of New York, and a hearing having been held before this Court on February 23, 1956,

Now, on motion of Leonard P. Moore, United States Attorney for the Eastern District of New York, it is

ORDERED, ADJUDGED AND DECREED that the stay contained in the order to show cause, dated February 16, 1956, and issued by this Court, be and the same is hereby vacated.

Dated: Brooklyn, N. Y., February 23, 1956.

/s/ LEO F. RAYFIEL
United States District Judge.

Affidavit of John Foley.

[91]

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[SAME TITLE.]

State of New York,
County of Kings, ss:

JOHN FOLEY, being duly sworn deposes and says that he is a Revenue Agent of the Internal Revenue Service, Treasury Department of the United States, duly appointed according to law and acting as such.

That my present assignment is Chief of the Office Audit Branch, Lower Manhattan, ~~which~~ position I have held since June 15, 1954.

That in September of 1952, I was employed as a Revenue Agent assigned to Staten Island and during that month was assigned by my superiors to conduct an examination of various tax returns which had been prepared by James D. Russo and was also directed to conduct a similar examination as to Mr. Russo's return.

In connection with the examination of Mr. Russo's return it was necessary to secure a waiver, form 872, for the purpose of extending the Statute of Limitations beyond March 15, 1953, with respect to the year 1949. Accordingly a waiver form was mailed to Mr. Russo but when he failed to return it I communicated with him by telephone, spoke [92] to him briefly about the necessity for the waiver form and was referred by him to Mr. Frank Paulo who was then a practicing attorney in Staten Island and who, I am informed, is a Justice of the Municipal Court on Staten Island.

I had extensive conversations with Mr. Paulo concerning the necessity of receiving the waiver and outlined the consequences if it was not signed. Mr. Paulo agreed to

furnish the waiver and accordingly on February 12, 1953 a waiver executed by Mr. Russo was received by my office.

In May of 1953, my investigation into Mr. Russo's matter had reached the stage where it appeared advisable to examine his records in connection with the tax returns. I therefore communicated with Mr. Frank Paulo to arrange for such an examination into Mr. Russo's returns for the years 1949, 1950 and 1951. No appointment could be arranged at that time. However, in a telephone conversation with Mr. Paulo during the month of May, 1953, I was informed that Bill Mack, an accountant with offices at 36 Richmond Terrace, Staten Island, was attempting to assemble Mr. Russo's records and would communicate with me when they were so assembled. From previous contacts with Mr. Paulo's office in other tax matters I had had occasion to meet Mr. Mack who had done similar work for Mr. Paulo in these other matters, including one matter involving an examination of the 36 Richmond Terrace Corporation, a corporation in which Mr. Paulo was a majority stockholder himself.

Numerous attempts were made by me to secure the books and records from Mr. Russo through Mr. Paulo or Mr. Mack during the ensuing months and in September of 1953, I was informed that Mr. Paulo would finally permit Mr. Mack [93] to submit the books and records to me in about a week. On or about October 8, 1953, I communicated with Mr. Paulo and received permission from him to pick up the books and records of Mr. Russo from Mr. Mack. After several telephone calls and trips made by me to Mr. Mack's office without success I finally received certain records from Mr. Mack on or about October 27, 1953.

The records submitted and received by me consisted of bank statements, cancelled checks, checkbook stubs and worksheets prepared by Mr. Mack from these records for each of the years 1949, 1950 and 1951. These records

were considered incomplete since the bank statements for May and June of 1949 were missing. Some checks were missing also and could not be identified by examination of stubs. Mr. Mack's worksheets represented his analysis of the various checks and purported to show expenditures by Mr. Russo for business purposes.

From the records submitted by Mr. Mack an analysis of the checks labelled "loans" was made, the names of insurance companies with whom Mr. Russo did business were listed and Mr. Russo's deposits and bank balances for the years 1949, 1950 and 1951 were noted in my work papers.

On November 16, 1953, Mr. Mack appeared at my office and requested the return of the records which had been submitted to me by him previously. I informed him that I would like a letter from him making the request and accordingly on November 23, 1953, Mr. Mack directed such a letter to me and the records were returned to him immediately.

At the request of Assistant United States Attorney Kenneth C. Sternberg I have examined photostatic copies [94] of worksheets obtained from Mr. Mack by Revenue Agent Thomas Ginnane on September 23, 1955, and to the best of my recollection they appear to be identical with the papers previously submitted to me with the consent of Mr. Paulo the attorney then representing Mr. Russo and returned by me to Mr. Mack when requested.

(Sworn to by John Foley, Feb. 21, 1956.)

Affidavit of Morris Skolnick.

[95]

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[SAME TITLE.]

State of New York,
County of Kings, ss:

MORRIS SKOLNICK, being duly sworn, deposes and says:

I am a Special Agent of the Internal Revenue Service, Treasury Department of the United States, duly appointed according to law and acting as such and have held this position since July, 1950.

In the early part of 1952 I was assigned to investigate a number of tax returns which investigation required a conference with the petitioner.

On June 23, 1952, I telephoned to the petitioner at his office in the County Clerk's Office of Richmond County, where he was then employed. He said that he could not leave his office to come to the office of the Intelligence Division in New York and I then told him that I would come to his office in Staten Island.

On June 26, 1952, I, for the first time, met and talked with petitioner in the library of the County Court House of Richmond County. During the interview he told me that he had worked in the County Clerk's Office for [96] some years and that he was also conducting an insurance business. He also said that he had prepared income tax returns for other individuals and promised to give me a list of the names of the individuals for whom he had prepared such tax returns. He described his insurance business generally and gave me the names of the various companies with which he had done business.

Affidavit of Morris Skolnick

On July 3, 1952, the petitioner telephoned me at my office and told me that the list was almost completed and that he wished to submit it to me in person.

On July 8, 1952, petitioner came to my office, at 253 Broadway, New York, and handed me a list containing the names of some seventy-five persons. He also gave me the names of the two banks in which he said he had checking accounts.

On February 10, 1953, I received a telephone call from Frank D. Paulo, Esq., an attorney then practising law with offices in Staten Island, who advised me that petitioner had retained him to represent petitioner.

On May 6, 1953, petitioner himself telephoned and told me that he had retained Mr. Paulo to represent him and suggested that I communicate with Mr. Paulo with respect to a possible appointment for an interview.

On May 8, 1953, after receiving a message that Mr. Paulo had called me I called him back and made an appointment to interview petitioner on May 19, 1953, at 253 Broadway.

On May 19, 1953, Mr. Paulo and petitioner came to my office and an interview ensued. I said, "Mr. Russo, you have been asked to appear here this morning in connection with an official investigation being conducted by the [97] Bureau of Internal Revenue. I want to ask certain questions in the form of a sworn statement. Do you have any objection to making a statement under oath?" to which the petitioner replied "No, sir." Petitioner then took an oath to tell "the truth, the whole truth and nothing but the truth" and answered the various questions which I asked, one of which was:

> "Q. Do you understand, that according to your constitutional rights, you may decline to answer any questions that might tend to incriminate you under a Federal Statute? Do you understand this? A. Yes, sir."

Affidavit of Morris Skolnick

After petitioner had said that he was employed in the County Clerk's Office of Richmond County I asked:

"Q. What other types of activities do you engage in?"

to which he responded "Insurance and real estate." Petitioner told me that during the years 1949, 1950 and 1951 he represented some seven insurance companies, the names of which he gave me. I asked him whether he reported his income from his insurance business on his income tax returns for the years 1949 through 1951 to which he replied "Yes, sir, to the best of my ability." and said that he maintained various records for his insurance business income which included statements of premiums, receipts of payments, checks, deposit books, and expiration dates. He said that the records which he maintained showed commissions received and were in a receipt book which showed the premiums collected. Concerning his bank account in which moneys collected were deposited he said "There was only one account that I had." The interview [98] continued for some time and was taken down stenographically and transcribed.

On June 9, 1953, petitioner's attorney, Mr. Paulo, telephoned me to inquire whether June 22, 1953, would be convenient as a date on which petitioner could sign his statement. Subsequently, on June 19, 1953, Mr. Paulo telephoned requesting a postponement until July 2. On July 2, 1953, Mr. Paulo and the petitioner called at my office where he read his transcribed statement and initialed each page in the lower right-hand corner. He then signed the statement under the following paragraph:

"I have carefully read the foregoing statement, consisting of twenty-two (22) pages, which is a transcript of questions which were propounded to me and my answers to such questions. I hereby certify that the foregoing answers are true and

correct to the best of my knowledge and belief, and that I have made the corrections shown and have placed my initials opposite each correction."

At the time he signed the statement, he again took an oath before me.

In August, 1953, I called upon the Travelers Company and the United States Fidelity & Guaranty Company and learned of the volume of business which petitioner did with these companies. These were two of the companies whose names petitioner had given to me previously.

On December 10, 1954, I communicated with Mr. Russo, the petitioner, with respect to a further interview. I had learned that his attorney, Mr. Paulo, was now a Judge in Staten Island, and could no longer represent Mr. Russo, and called him directly for that reason. Petitioner stated that he was agreeable to coming to my office on December 16, 1954, and that he desired to bring Mr. William [99] Mack with him.

On December 16, 1954, petitioner and Mr. Mack arrived at my office. Petitioner was asked whether he would answer questions under oath and said that he did not want to answer any questions under oath as he previously had legal counsel and did not have any at that time; that Mr. Paulo, who previously was his legal counsel, was now a Judge; that he had no objection to being questioned informally in the presence of his accountant Mack. I then told him that he need not answer any questions that would incriminate him and advised him of his constitutional rights. During this interview petitioner told me of the nature and extent of his property; his insurance and real estate business; and gave me a general description of the books and records which he kept.

No. [redacted] 163

Office Supreme Court
FILED
JUN 3 1957
JOHN T. FEY, Clerk

United States Court of Appeals

For the Second Circuit.

IN THE MATTER
OF
The Application of JAMES D. RUSSO, for an Order Declaring Unreasonable, Illegal and Void a Certain Search and Seizure, etc.

JAMES D. RUSSO,
Appellant,

THE UNITED STATES OF AMERICA,
Appellee.

APPENDIX TO APPELLANT'S BRIEF.

On Appeal From the United States District Court for the Eastern District of New York.

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United States Court of Appeals

FOR THE SECOND CIRCUIT.

IN THE MATTER

of

The Application of JAMES D. RUSSO, for an Order Declaring Unreasonable, Illegal and Void a Certain Search and Seizure, etc.

JAMES D. RUSSO,

Appellant,

THE UNITED STATES OF AMERICA,

Appellee.

Statement Under Rule 15(b).

The above-entitled action was commenced in the United States District Court for the Eastern District of New York, on February 16, 1956, when the Honorable Leo F. Rayfiel, U. S. D. J., signed an order to show cause, declaring unreasonable, illegal and void a certain search and seizure, etc. The affidavit of James D. Russo was filed in support thereof. On February 23, 1956, the Honorable Leo F. Rayfiel, U. S. D. J., signed an order vacating the stay in the order to show cause of February 16, 1956. Affidavit of John Foley, Morris Skolnick and Leonard P. Moore were filed in support thereof. On February 27, 1956, the Honorable Leo F. Rayfiel, U. S. D. J., signed an order to show cause for the taking of the deposition of William Mack. An affidavit of Boris Kostelanetz was filed in support thereof. The affidavit

of Frank B. Paulo and a supplemental affidavit of James D. Russo were filed in further support of petitioner's application on March 5, 1956.

On June 27, 1956, the Honorable Leo F. Rayfiel, U. S. D. J., filed an opinion denying petitioner's motions for an order declaring unreasonable, illegal and void a certain search and seizure, etc., and for an order granting leave to petitioner to take the deposition of William Mack.

Petitioner, James D. Russo, filed his notice of appeal on July 5, 1956.

Order to Show Cause.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of JAMES D. RUSSO, for an Order Declaring Unreasonable, Illegal and Void a Certain Search and Seizure, etc.

[56] Upon reading the annexed affidavit of James D. Russo, sworn to February 13, 1956, and on motion of Corcoran, Kostelanetz & Gladstone, Esqs., attorneys for the petitioner herein, it is

ORDERED, that the United States Attorney for the Eastern District of New York show cause at a stated term for Civil Motions of this Court in Room 727 of the United

States Court House, Washington and Johnson Streets, Brooklyn, New York, on the 23d day of February, 1956, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be made pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure:

1. Declaring unreasonable, illegal and void the search and seizure made as alleged in the attached petition:

2. Directing the return of all books, papers, records, memoranda, extracts, notes and copies therefrom, other documents and all other property belonging to the above captioned petitioner taken by agents and representatives of the United States Government and now in the possession of the United States Attorney or other agents or representatives of the United States of America;

3. Directing that any and all of the aforesaid documents, books, papers, memoranda and all other property belonging [57] to the above captioned petitioner be suppressed and that the United States Attorney and all other agents of the Government be restrained and precluded from using any of said books, papers, records, memoranda, other documents and all other property belonging to the above captioned petitioner, or any information directly or indirectly obtained therefrom or by means thereof or as a result of examination and use thereof and leads and clues revealed thereby and that all information disclosed to the Government or to its agents by the petitioner above captioned, or directly or indirectly obtained by the Government through or as a result of or derived from the use of such information, and all leads, clues and other evidence directly or indirectly obtained by or through or derived from or revealed by such information be suppressed and that the United States Attorney and all other agents or representatives of the United States Government be restrained from submitting same to a Grand Jury, from using same on any trial or for any other purpose;

4. Directing that a hearing be held and that evidence may be adduced for the determination of issues of fact arising out of this motion;

and it is further

ORDERED, that the United States Attorney for the Eastern District of New York and all other agents and representatives of the United States of America be and they hereby are stayed from submitting any evidence or information to a Grand Jury or from taking any other or further proceedings in relation to the above captioned petitioner pending the determination of this application and the service of notice of entry of an order hereon; and it is further

ORDERED, that sufficient cause appearing therefor, let service of a copy of this order and the affidavit upon which it is [58] based by delivering same personally to the United States Attorney for the Eastern District of New York or to such other person designated by him to receive service of process on or before 4:00 P. M., February 17, 1956, be deemed good and sufficient service.

Dated: New York, N. Y., February 16, 1956.

/s/ LEO F. RAYFIEL,
United States District Judge

A True Copy.
Attest
Dated February 16, 1956
PERCY G. B. GILKES
Clerk
By MARIE R. BARETTE,
Deputy Clerk

Affidavit of James D. Russo, Read in Support of Motion.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[59]

[SAME TITLE.]

State of New York,
County of New York, ss:

JAMES D. RUSSO, being duly sworn, deposes and says:

1. I am the petitioner in the above encaptioned special proceeding, and have knowledge of the facts hereinafter set forth.

2. This is an application for an order pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure suppressing certain evidence and certain of my private books, records, papers, copies therefrom and extracts, notes and information taken therefrom, more particularly set forth in the order to show cause herein, on the ground that such evidence, books, records and papers, and the information obtained therefrom were obtained by means of, and as a result of violation of the Fourth and Fifth Amendments to the Constitution and the Laws of the United States.

3. During the summer of 1952, while I was engaged in my regular occupation of Assistant Clerk in the office of the Clerk of the County of Richmond, a man approached me and introduced himself as Morris Skolnick of the Bureau of Internal Revenue. Mr. Skolnick interviewed me and stated in substance that certain income tax returns [60] which I had prepared for others were incorrect. He asked my help in ascertaining the identities of the individuals for whom I had prepared tax

returns and he requested generally that I assist the United States Government to the end that the Government be reimbursed if it should appear that the income tax of these individuals had been incorrectly computed because certain of the items of income and expenses given me in those returns were allegedly incorrect. I assisted Mr. Skolnick in obtaining this information.'

4. In May 1953, consistent with the foregoing, I appeared at the office of Mr. Skolnick and was formally interrogated. It is not to be doubted that Mr. Skolnick was then still investigating the returns of other individuals, although, as my counsel advised me, his interrogation also pointed to an investigation of a possible violation of Internal Revenue Code 3793(b)(1) of the Act of 1939. The interrogation ended with an expression of gratitude to me on the part of Mr. Skolnick. Confirming the foregoing, my counsel now advises me that from the face of the interrogation, Mr. Skolnick was interested in a violation of the Internal Revenue Code by other people and by the possibility of a violation of the section dealing with aiders, abettors, counselors, advisers, etc., but he did not question my own tax matter and touched on the subject of my own occupation only in a passing way.

5. In 1953, I retained one William Mack, who held himself out to be an accountant, to review my books and records for 1949, 1950 and 1951. I knew nothing of any criminal investigation of my tax returns.

6. Thereafter, in accord with Mr. Mack's directions, I turned over to Mr. Mack my records of cancelled checks, bank statements and the like.

[61] 7. Thereafter, and in July, 1954, I received in the mail from the District Director of Internal Revenue a communication which confirmed the civil nature of the ex-

amination. The letter directed me to contact Mr. Thomas J. Ginnane, who is described in this letter as an Internal Revenue Agent. The letter also directs that written replies be addressed to the "Audit Division." A photostatic copy of said communication together with envelope is attached hereto as "Exhibit A," and made a part hereof.

8. Throughout the latter part of 1953 and continuing through 1954, and the first part of 1955, as well, Mr. Mack stated to me from time to time that he was consulting the Internal Revenue Service, making arguments and filing papers on the matter, which were unknown to me, and that the matter should be cleared up shortly. He said that it was his job to make a recomputation of my income and that additional tax, if any, in due course, would be determined.

9. Between May, 1953, when I discussed with Mr. Skolnick the income tax returns I had prepared for others, and the spring of 1955, I never saw Mr. Skolnick.

10. In the spring of 1955, I received a telephone call from Mr. Skolnick who asked me to come to see him. I came to his office accompanied by Mr. Mack who said he should accompany me. When we arrived, Mr. Skolnick greeted Mr. Mack but before commencing any discussion, he inquired whether Mr. Mack had a card authorizing him to practice before the Treasury Department. Mr. Mack said that he did not, that Mr. Skolnick knew he did not, and that he had been dealing with Mr. Skolnick on this matter for a long time and that he did not understand Mr. Skolnick's sudden concern at this time. Mr. Skolnick then stated that Mr. Mack's lack of a Treasury card did not matter. The Agent then proceeded with the interrogation, by far the greatest

part of the [62] questions being answered by Mr. Mack. This is the first time I heard of the necessity for admission to practice before the Treasury and Mr. Mack's lack thereof. Mr. Mack argued many points of fact and law, the substance of which I did not understand.

11. Throughout the entire course of the examination of my returns, the examination was treated as an attempt to achieve a civil settlement. My conviction that this was the purpose of the audit was reinforced and confirmed by the letter of Internal Revenue Agent Ginnane (attached hereto as "Exhibit A"). The civil nature of this audit was even further manifested at a later date when Revenue Agent Ginnane prepared a receipt for papers Mr. Mack had given him in which he acknowledged the receipt of "* * * the following work sheets pertaining to the tax examination of James D. Russo for the years 1949, 1950 and 1951." Neither the words "fraud investigation" nor any one of them appear in this receipt, and it is signed "Thomas J. Ginnane, Internal Revenue Agent." It was undoubtedly known to Mr. Mack that an Internal Revenue Agent is an officer whose duty it is to audit a taxpayer's return and make the consequential civil settlement of any claim.

12. I now know that Mr. William Mack, who acted as my representative before the Internal Revenue Service, is unenrolled and not admitted to practice before the Internal Revenue Service. He is neither a lawyer nor a certified public accountant. He was engaged by me specifically for the purpose of this representation and was not, for the years involved, the accountant or bookkeeper customarily employed by me in the regular course of my business. In an affidavit sworn to September 23, 1955, before Mr. Skolnick, and made at Mr. Skolnick's behest, Mr. Mack swore as follows:

"* * * During the year 1953, James D. Russo of 94 Van Name Avenue, Staten Island 3, N. Y., retained me as an accountant to represent him in a tax investigation being conducted by the Internal Revenue Service. Prior to this time I did not do any accounting work for Russo."

[63] 13. I am informed by my counsel that the Congress of the United States has provided for the establishment of rules and regulations by the Secretary of the Treasury governing the recognition, qualification and enrollment for practice of individuals before the Treasury Department. I am also informed that stringent regulations designed for the protection of taxpayers have been established by the Secretary. As I now know, Mr. Mack has never been granted the privilege of practice before the Internal Revenue Service and has never shown that he is possessed of the necessary qualifications to do so. The requirements include knowledge of the laws and regulations regulating to tax matters as well as other subjects. The regulations exclude unenrolled individuals from practice in relation to all matters connected with the presentation of a client's interest to the Treasury Department, including the preparation and filing of necessary written documents, correspondence with the Treasury Department relative to such interests, and other appropriate functions. Mr. Mack purported to do these things despite his disability and this basic disability, as it now appears, was known to the agents of the Treasury Department at all times, because as I am now informed, before a taxpayer may be represented before the Internal Revenue Service, his representative must file powers of attorney from the taxpayer. No such powers of attorney were filed. In the aforesaid affidavit procured by Mr. Skolnick from Mr. Mack, Mr. Mack stated: